REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

ENGTEK PHILIPPINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. EB No. 89
(C.T.A. Case No. 6644)

Present:
Acosta, *Presiding Justice,*
Castañeda, Jr.,
Bautista,
Uy,
Casanova, and
Palanca-Enriquez, *JJ:.*

Promulgated:

JUN 14 2006 GxApolinario

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DECISION

CASTAÑEDA, JR., *J.:*

This is an appeal from the January 26, 2005 Decision of the Second Division of the Court of Tax Appeals (the Court in Division) in C.T.A. CASE NO. 6644 as well as the Resolution of the Court in Division dated April 28, 2005 denying petitioner's Motion for Reconsideration of the aforementioned Decision. The Court in Division dismissed petitioner's claim for refund for lack of merit.

74

The facts of the case are as follows:

Petitioner, a domestic corporation duly registered and organized under Philippine laws, is engaged in the manufacturing and marketing of electronics and mechanical machinery products, parts and accessories. It is 99.99% owned by Eng Teknologi Holdings Bhd (hereafter "ETHB"), a corporation duly registered and existing under the laws of Malaysia.

On December 20, 2000, petitioner declared P50,000,000 as cash dividends. On April 10, 2001, petitioner withheld the income tax due on the dividends amounting to P7,500,000 and remitted the same to the BIR – RDO No. 56 Calamba, Laguna.

On October 8, 2001, the board of directors of petitioner resolved to reverse the cash dividend declaration. On October 15, 2001, petitioner requested Revenue District No. 56, Calamba, Laguna, for the offsetting the final withholding tax of P7,500,000.00 with taxes that may become due on future declaration of cash dividends, intended to be made sometime in March 2002. The BIR denied the request in a letter dated January 16, 2002 on the ground that taxes paid could not be offset with future liabilities.

On September 17, 2002, petitioner filed an administrative claim for tax credit/refund, using BIR Form No. 1914 (Exhibit "L"), in the amount of P7,500,000.00 with Revenue District No. 56 of Calamba, Laguna. This claim for refund is anchored on the proposition that petitioner resolved to reverse said cash dividend declaration on October 8, 2001 for reasons pertaining to the financial structure of the Eng Tek Group of Companies to which the petitioner belongs.

On April 8, 2003, petitioner's administrative claim not having been resolved by the respondent, it filed a Petition for Review with the Court of Tax Appeals praying for the refund/tax credit of the P7,500,000.00 representing income tax erroneously paid on April 10, 2001.

On January 26, 2005, the Second Division of the Court of Tax Appeals (hereafter the Court in Division) rendered a Decision denying petitioner's claim for refund/tax credit, the dispositive portion thereof reads as follows:

> **WHEREFORE**, premises considered, the present Petition for Review is hereby **DISMISSED** for lack of merit.
>
> No pronouncement as to costs.
>
> **SO ORDERED**."

Petitioner filed a Motion for Reconsideration on February 16, 2005. On April 28, 2005, the Court in Division denied petitioner's Motion for Reconsideration. Hence, this appeal.

In its present Petition for Review, the petitioner made the following assignment of errors:

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I.

The Second Division of this Honorable Court erred in ruling that the cash dividend declared by petitioner could not be validly reversed or revoked.

II.

The Second Division of this Honorable Court erred in inquiring into the reasons for the reversal of the cash dividend in the absence of any allegations from the respondent of fraud or intent to evade taxes.

III.

The Second Division of this Honorable Court erred in ruling that petitioner has failed to discharge the burden of proof to entitle it to a refund.

PETITIONER'S ARGUMENTS

Petitioner argues that admittedly, it is a general rule that when dividends are declared, the same cannot be unilaterally revoked since a creditor-debtor relationship is created between the corporation and its stockholders where the latter becomes a creditor of the corporation. According to the petitioner, the purpose for this rule is to protect the stockholders by vesting them with the right to be paid such dividends once a declaration is made by the corporation, however, in this particular case, its Board of Directors who represent the sole owner of the petitioner, agreed to the reversal or revocation of the dividend. Petitioner asserts that clearly the reversal or revocation of the cash dividend is allowed under our corporate laws and yet the Second Division of this Honorable Court would withhold this right to petitioner and deny its rightful claim for a refund.

On the second assigned error, petitioner argues that in the absence of any allegation of fraud or wrongdoing, the Second Division of this Honorable Court should no longer inquire as to the reason for the reversal or revocation of the dividend. In inquiring into the reasons of the reversal, the Court in Division substituted its own judgment for the business judgment of the Board of Directors of the petitioner.

According to the petitioner, the declaration of dividends was inopportune or ill-timed. The Eng Tek Group of Companies was undergoing a corporate reorganization or restructuring at that time. In other words, the organizational framework of the Group was being overhauled. In such a reorganization, the future business direction and thrust of the Group is usually re-examined and refocused. If it was decided that the Eng Tek Group should invest more in the Philippines, it would make absolutely no sense to declare cash dividends and remit them outside the country. Instead, stock dividends should be declared and the money invested in the Philippines. Clearly, the declaration of dividends would preempt any decision regarding the future of the Group and therefore the declaration was inopportune or ill-timed.

78

Finally, petitioner alleges that it has established the fact that a cash dividend was declared, the tax thereon was paid and the dividend was reversed or revoked by a resolution of the petitioner's Board of Directors who represent petitioner's sole shareholder. Petitioner avers:

> "It is respectfully submitted that all the facts entitling petitioner to a refund were therefore established and thus petitioner is entitled to a refund.
>
> The Second Division of this Honorable Court, however, seems to imply that in order for the reversal or revocation to be valid, proof must be submitted as to the specific reasons therefore and the reasons must be acceptable to it.
>
> It is respectfully submitted that there is no requirement to submit the reasons for such reversal and for the courts to inquire into the sufficiency of the reasons would be tantamount to the imposition of their own judgment on petitioner's Board of Directors and sole stockholder."

RESPONDENT'S ARGUMENTS

Respondent filed his Comment on June 20, 2005 asserting that petitioner failed to discharge the burden of proof to entitle it to a refund. That petitioner is not entitled to the claim for refund/tax credit in the amount of P7,500,000.00 based on the following grounds:

A. Petitioner failed to show proof of compliance with the prescriptive period in the filing of administrative and judicial claims for refund.

B. Petitioner failed to establish the fact of remittance to the BIR of the alleged erroneous income tax payment due on the declared cash dividends.

C. Assuming that the amount of P7,500,000.00 was remitted to the BIR, the same was remitted pursuant to the provision of the law, hence not refundable.

D. Petitioner failed to establish that the reversal of the declaration of dividends is valid and not intended to defeat payment of income tax.

E. Petitioner failed to discharge the burden of proof to entitle it to a refund.

Respondent contends that under Section 2.57.4 of Revenue Regulations No. 2-98, as amended, provides that the "obligation of the payor to deduct and withhold the tax under Section 2.57 of these regulations arises at the time an income is paid or payable, whichever comes first, the term payable refers to the date the obligation become due, demandable or legally enforceable", hence, when the petitioner remitted the tax withheld on April 10, 2001, the same was made pursuant to the provisions of the Tax Code and its implementing revenue regulations, thus, not erroneous and therefore cannot be the subject of administrative and judicial claim for refund.

With respect to his argument that petitioner failed to establish that the reversal of the declaration of dividends is valid and not intended to defeat payment of income tax, respondent states that under Section 29 of the Tax Code an "improperly accumulated earnings tax" is imposed on corporations which fail to declare and pay dividends to their shareholders citing the provision of Revenue Regulations No. 2-2001 on what constitutes accumulation of earnings for the reasonable needs of the business, as follows:

a) Allowance for the increase in the accumulation of earnings up to 100% of the paid-up capital of the corporation as of Balance Sheet date, inclusive of accumulations taken from other years;

b) Earnings reserved for definite corporate expansion projects or programs requiring considerable capital expenditure as approved by the Board of Directors or equivalent body;

c) Earnings reserved for building, plants or equipment acquisition as approved by the Board of Directors or equivalent body;

d) Earnings reserved for compliance with any loan covenant or pre-existing obligation established under a legitimate business agreement;

e) Earnings required by law or applicable regulations to be retained by the corporation or in respect of which there is legal prohibition against its distribution;

f) In the case of subsidiaries of foreign corporations in the Philippines, all undistributed earnings intended or reserved for investments within the Philippines as can be proven by corporate records and/or relevant documentary evidence.

Respondent argues that petitioner claims that the reversal of the cash dividend was for reasons pertaining to the financial structure of the Eng Tek Group of Companies to which the petitioner belongs. However, aside from Exhibit "H", the Corporate Secretary's Certificate dated March 31, 2003 showing that on October 8, 2001 the petitioner's board of directors resolved to reverse its resolution of December 20, 2000 declaring the cash dividend, no other document was presented by the petitioner to prove that the reversal of dividend was validly consented to by the stockholders of the petitioner and that petitioner failed to prove that the same made pursuant to the reasonable needs of the petitioner's business. According to the respondent:

81

"Petitioner argued that the reversal of dividends was within the scope of corporate powers of the Board of Directors and validly consented to by the petitioner's stockholders. We do not agree. There is no showing in Exhibit "H", inclusive, of the petitioner, or Annex "D" of the Petition, that the petitioner's stockholders validly consented to the alleged reversal of dividends as alleged by the petitioner.

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It is worth emphasizing that the withholding and remittance of tax was allegedly made on 10 April 2001. This presupposes remittance of dividends to Eng Technology Holdings BMD in March 2001 which gives rise to the withholding and consequent remittance of tax in April 2001. The alleged reversal of dividend was made thereafter, or on October 8, 2001 based on the certification of the Corporate Secretary issued on 31 March 2003, the latter date is evidently six months after the filing of the administrative claim for refund made on 17 September 2002. It must be noted that the same certification, which is self-serving, was never submitted to the BIR, it being prepared on a much later date. Likewise, petitioner made no valid explanation on the considerable length of time between the alleged date of remittance and the alleged reversal of dividends. The only logical explanation for the alleged date of remittance of tax on dividends in April 2001 is the actual remittance of dividends to its stockholder in the previous month considering the substantial amount involved in this particular case. Petitioner did not offer as evidence the accounting records leading to the remittance of tax in April 2001. Business transactions, which include tax remittances to the BIR, are normally documented or recorded in the petitioner's books of accounts which should properly show the staff/ and or officers who prepared, reviewed and approved the same as well as record the transactions in its books. Likewise, it is noted that petitioner did not present books of accounts and other related records and documents i.e., audited financial statements including the auditor's notes on the declaration and subsequent reversal of dividends, Journal Voucher, or its equivalent for the accounting entry or entries of the alleged reversal of dividends, that would validate the petitioner's claim that the reversal of dividends is valid. Taken together, assuming there was indeed tax remittance made to the BIR in April 2001 representing tax on dividend, the same was made in the regular course of business, hence cannot be made the subject of administrative and judicial claims for refund. In fine, petitioner failed to prove that there was an unlawful, erroneous or wrongful remittance of tax to the BIR that can properly be the subject of administrative and judicial claims for refund."

Lastly, respondent argues that tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the exemption. Accordingly, the petitioner has the burden of proof to establish the factual and legal bases of its claims for refund/tax credit certificate. Petitioner, however, fell short of proving the veracity of its claim for refund.

THIS COURT'S RULING

The petition has no merit.

To be entitled to a refund of the final withholding tax, petitioner has to prove through the presentation of substantial evidence that the reversal of the cash dividends was legitimate and that such reversal is not intended to defeat the collection of an income tax that is legally due from a completed transaction. Petitioner failed in this task.

As found by the Second Division of the Court of Tax Appeals, "[p]etitioner's argument that for reasons pertaining to the financial structure of the Eng Tek Group of Companies (to which petitioner belongs), it resolved to reverse said cash dividend declaration, is flawed, and without factual and legal basis. Other than the Corporate Secretary's Certificate dated March 31, 2003, showing the resolution of the Board of Directors on October 8, 2001 to prove that on said date the Board approved the resolution reversing the declaration of cash dividend, no other document was presented by the petitioner to prove the financial structure of Eng Tek Group of Companies, to which the petitioner allegedly belongs."

Petitioner did not offer in evidence its accounting records such as its audited financial statements for the year 2000 to prove its financial position at the time the cash dividends were declared. Likewise, it did not present its financial statements for the year 2001 and thereafter, to prove the financial aspects of the corporate reorganization or restructuring on the petitioner's capital requirements, it being the reason given by the petitioner for the reversal of the cash dividend declaration. Petitioner also failed to present the accounting records such as its journals, ledgers, and other books that would prove that indeed, the reversal of the declaration of cash dividends were duly recorded in its books. The reversal of the cash dividend declaration and its effects on the stockholder's equity should have been reflected in petitioner's books of accounts. Also, not even a draft proposal of its corporate reorganization was presented to the Court to show that there really was a corporate restructuring.

The foregoing documents could prove that there was an actual reversal of the cash dividend duly recorded in petitioner's books. We therefore concur with the ruling of the Court in Division denying petitioner's claim for refund for insufficiency of evidence for its failure to present in evidence the financial documents or records that could prove that the

84

reversal of the cash dividends really transpired and was duly recorded in its financial records.

Contrary to petitioner's allegation, the Court in Division did not inquire into the wisdom of the reversal of the cash dividend declaration but rather the Court's ruling was based on the sufficiency of the evidence presented by the petitioner tending to prove that the reversal actually transpired and was done in accordance with the requirements of the 1997 NIRC, particularly, Title IX thereof, captioned Compliance Requirements which provides, as follows:

> Chapter I. Keeping of Books of Accounts and Records
>
> Sec. 232. Keeping of books of accounts. -
>
> (A) *Corporations, companies, partnerships or persons required to keep books of accounts.* — All corporations, companies, partnerships or persons required by law to pay internal revenue taxes shall keep a journal and a ledger or their equivalents: *provided, however,* That those whose quarterly sales, earnings, receipts, or output do not exceed Fifty thousand pesos (P50,000) shall keep and use simplified set of bookkeeping records duly authorized by the Secretary of Finance ***wherein all transactions and results of operations are shown and from which all taxes due the Government may readily and accurately be ascertained and determined any time of the year:*** *provided, further,* That corporations, companies, partnerships or persons whose gross quarterly sales, earnings, receipts or output exceed One hundred fifty thousand pesos (P150,000), shall have their books of accounts audited and examined yearly by independent Certified Public Accountants and their income tax returns accompanied with a duly accomplished Account Information Form (AIF) which shall contain, among others, information lifted from certified balance sheets, profit and loss statements, schedules listing income-producing properties and the corresponding income therefrom and other relevant statements. *(Emphasis supplied)*

The following documents constitute the totality of the documentary evidence presented by petitioner in this case:

85

EXHIBIT	DESCRIPTION
A	Secretary's Certificate dated 26 January 2001 showing the resolution of the Board of Directions dated 20 December 2001 declaring cash dividends
B	Petitioner's Monthly Remittance Return of Final Income Taxes Withheld dated 10 April 2001
C	Certification issued by Rizal Commercial Banking Corporation (RCBC) dated 17 July 2002
D	RCBC Validated Transfer Form dated 9 April 2001
E	Taxpayers Returns Payment Form issued by RCBC
F	Certification issued by BIR-Quezon City showing details of payment and the certification of the BIR on the receipt of payment of the tax
G	Delinquency Verification Form issued by BIR-Quezon City dated 6 August 2002 showing the name of the taxpayer and the finding of the Collection and Enforcement Division of the BIR as to the tax liabilities of petitioner
H	Secretary's Certificate dated 31 March 2003 with submarkings thereon showing the Resolution of the Board of Directors on 8 October 2001 and the printed name and signature of the petitioner's Assistant Corporate Secretary
L	BIR Form No. 1914 or Application for Tax Credits/Refunds filed by petitioner showing the name of the taxpayer, the amount being claimed for tax credit/refund, the reason for filing the claim, the printed name and signature of petitioner's representative and the receiving stamp of the Revenue District Office of Calamba, Laguna on September 17, 2002.
M	Verification slip issued by BIR Quezon City dated 6 August 2002 showing the absence of tax liabilities on the part of the petitioner
N	General Information Sheet filed by the petitioner with the Securities and Exchange Commission ("SEC") showing the date of receipt by the SEC, the largest shareholder of the petitioner, and the name and signature of petitioner's Assistant Corporate Secretary.
O	Secretary's Certificate dated 28 July 2003 showing the resolution of the Board of Directors on 11 March 2003 approving the filing of a petition for refund of the amount of Php7,500,000.00 with the

(84)

Court of Tax Appeals

From the foregoing list of petitioner's exhibits, it is noteworthy that **no** document or record was offered in evidence that shows that the declaration and reversal were both duly recorded in petitioner's books of account. Neither was there any proof offered showing petitioner's financial or corporate structure concerning its supposed corporate reorganization/ investment plans. Hence, the Court in Division correctly ruled that the reversal of the cash dividend is flawed and without factual and legal basis, thus:

> Petitioner's argument that for reasons pertaining to the financial structure of the Eng Tek Group of Companies (to which petitioner belongs), it resolved to reverse said cash dividend declaration, is flawed, and without factual and legal basis.
>
> Other than the Corporate Secretary's Certificate dated March 31, 2003, showing the resolution of the Board of Directors on October 8, 2001 to prove that on said date the Board approved the resolution reversing the declaration of cash dividends, no other document was presented by the petitioner to prove the financial structure of Eng Tek Group of Companies, to which the petitioner allegedly belongs. Petitioner did not present its book of accounts, certified balance sheet, profit and loss statements, or other equivalent books, that would prove that it had no unrestricted retained earnings at the time of the declaration of cash dividends on December 20, 2000. The allegation simply remained an allegation and no court of justice will regard it as truth. It is well-settled that in an action for refund, the taxpayer has the burden of proof to establish the right to refund. Failure to sustain the burden is fatal to the claim for refund/credit (Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 131). Petitioner failed to discharge this burden of proof.
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> Since petitioner's claim for the entitlement of tax refund or credit remains unproven and unsubstantiated, the same cannot be granted. It is axiomatic in the law of taxation that taxes are the lifeblood of the nation. Hence, exemptions therefrom are highly disfavored in law and he who claims tax exemption must be able to justify his claim or right (*Afisco Insurance Corporation vs. Court of Appeals, 302 SCRA 16*)."

87

Respondent's argument that even in the case of specific exemptions from the Improperly Accumulated Earnings Tax found in Revenue Regulations No. 2-2001, particularly in the case of subsidiaries of foreign corporations in the Philippines, require that all undistributed earnings intended or reserved for investments within the Philippines has to "***be proven by corporate records and/or relevant documentary evidence***" shows that a claim for exemption has to be proven by substantial evidence. Similarly, in petitioner's case, it is not enough that its board of directors resolved to reverse the cash dividend declaration. The reversal shall be substantiated by competent proof such as corporate records / financial documents showing the reversal of the cash dividend declaration. In this case, petitioner's failure to present sufficient evidence to prove its claim for refund is fatal to its cause. After all, it is axiomatic that a claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund. Tax refunds, like tax exemptions, are construed strictly against the taxpayer.[1] Petitioner was not able to overcome this burden of proof.

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[1] *Paseo Realty & Development Corporation vs. Court of Appeals, Court of Tax Appeals, and Commissioner of Internal Revenue,* G.R. No. 119286, October 13, 2004 (440 SCRA 235); *Commissioner of Internal Revenue vs. Tokyo Shipping Co. Ltd., represented by Soriamont Steamship Agencies, Inc., and Court of Tax Appeals,* G.R. No. 68252, May 26, 1995 (244 SCRA 332); *Commissioner of Internal Revenue vs. Philippine National Bank,* G.R. No. 161997, October 25, 2005 (474 SCRA 303); *Philex Mining Corporation vs. Commissioner of Internal Revenue, Court of Appeals, and The Court of Tax Appeals,* G.R. No. 125704, August 28, 1998 (294 SCRA 687); *Citibank, N.A. vs. Court of Appeals and Commissioner of Internal Revenue,* G.R. No. 107434, October 10, 1997 (280 SCRA 459)

88

WHEREFORE, premises considered, the present Petition for Review is hereby **DENIED**. Accordingly, the Decision dated January 26, 2005 and the Resolution dated April 28, 2005 are **AFFIRMED**.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

(on leave)
ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

(on leave)
OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Senior Associate Justice

89